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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,635	10/19/2001	Stewart Douglas Hutcheson	02-40282-US	1892

7590 07/06/2006

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EXAMINER

RAMPURIA, SHARAD K

ART UNIT PAPER NUMBER

2617

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/045,635	<b>Applicant(s)</b> HUTCHESON ET AL.	
	<b>Examiner</b> Sharad Rampuria	<b>Art Unit</b> 2617	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3,16,17,19-22 and 25-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,16,17,19-22 and 25-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

I. The Art Unit location of this application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2617.

The current office-action is in response to the amendments/remarks filed on 04/19/2006.

Accordingly, Claims 4-15, 18, 23-24, 32-50 are cancelled and Claims 1-3, 16-17, 19-22, 25-31 pending for further examination as follows:

### ***Double Patenting***

II. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

III. Claims 1-3, 16-17, 19-22, and 25-31 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-59 of U. S. Patent No. 6959183.

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Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the claimed limitations of the present U.S. Application No. 10/045635 for example, see Claim 1 is explained in following table, is transparently found in claim 22 of the U. S. Patent No. 6959183 with obvious wording variations.

<i>Instant Claim of U.S. Application No. 10/045635</i>	<i>Related Claim of U. S. Patent No. 6959183</i>
<p>1. A method for providing flat-fee wireless communications services, said method comprising:</p> <hr/> <p>Setting a given rate associated with a given period of time for said wireless communications services in a service area for at least one subscriber;</p> <hr/> <p>Enabling, for said at least one subscriber, unlimited use of said wireless communications services within said service area for said period of time upon receipt of a corresponding</p>	<p>22. A method of rendering wireless communications services to one or more subscribers in return for payment of a flat rate charge, comprising:</p> <hr/> <p>Determining a flat rate charge for the services; Determining a period of time within which the flat rate for the wireless device charge shall apply;</p> <hr/> <p>Providing unlimited access to the wireless communications services for the flat rate charge during the period of time;</p>

payment of said given rate;	
Wherein said service area substantially coincides with a modeled geographic area that approximate at least one municipal region indicative of anticipated participation of the at least one subscriber in at least one selected from the group consisting of living, working, playing, shopping and traveling.	Providing the wireless communications services solely from a limited geographic area that approximates at least one municipal region in which the subscriber substantially lives, works, and plays.

IV. *Applicant's arguments filed on 06/02/2006 have been fully considered but they are not persuasive.*

As per claim 1, in response to Applicant's argument that '183 patent doesn't teach, "Wherein said service area substantially coincides with a **modeled** geographic area that approximate at least one municipal region indicative of anticipated participation of the at least one subscriber in at least one selected from the group consisting of living, working, playing, shopping and traveling;" it is noted that '183 patent supports the assertion as, that Claim 1 of the '183 Patent which claims, "Providing the wireless communications services solely from a **limited** geographic area that approximates at least one municipal region in which the subscriber substantially lives, works, and plays". It is well known, a **modeled** geographic region could be a town, village, or a city, which includes a living, working, playing, shopping and traveling area,

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and a *limited* geographic region could be a town, village, or a city, which includes a living, working, playing, shopping and traveling area, besides a *limited* geographic region is a restricted area so a *modeled* geographic region could be an area which is restricted per boundaries or parameters, that is *limited* by boundaries or parameters. For that reason, a limited region could be a modeled region or vice-versa. Hence, it is believed that *'183 patent still includes the claimed limitations*.

The above arguments also recites for the newly amended claim 16, consequently the response is the same explanation as set forth above with regard to claim 1.

With the intention of that explanation, it is believed and as enlighten above, the refutation are sustained and double-patenting rejection is valid.

### *Conclusion*

V. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharad Rampuria whose telephone number is (571) 272-7870. The examiner can normally be reached on M-F. (8:30-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on (571) 272-7495. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or [EBC@uspto.gov](mailto:EBC@uspto.gov).

Sharad Rampuria  
Examiner  
Art Unit 2617

  
GEORGE ENG  
SUPERVISORY PATENT EXAMINER